

Federal Reserve Releases Additional Updates to Main Street Lending Program Guidance

July 02, 2020



Following the Federal Reserve's June 21 updates to its Frequently Asked Questions (FAQs) in respect of its Main Street Lending Program (MSLP), on June 26 the Fed released additional updates designed to clarify or address various issues, including (i) the extent to which an Eligible Lender must retain its requisite five percent of an Expanded facility upsized tranche, (ii) Borrowers' calculation of "total compensation" for purposes of complying with compensation limits, and (iii) the financial information Borrowers are required to provide to Eligible Lenders (and that such lenders are required to provide to the Main Street Portal). A summary of the changes is below:

- Eligible Lenders' Retention of Main Street Expanded Loan Facility (MSELF) Upsized Tranche Portion: A lender that sells a participation to the Main Street special purpose vehicle (SPV) must retain five percent of the MSELF upsized tranche until the earlier of (i) maturity of the upsized tranche or (ii) neither the SPV nor any Governmental Assignee (as defined in the FAQs) holds an interest in the loan.

This is true even if the underlying loan is part of a multi-lender facility. (FAQ D.8)

- Eligible Borrowers' Calculation of "Total Compensation": By way of background, for the duration of the MSLP loan and 12 months after that, Borrowers must comply with limitations on compensation under Section 4004 of the CARES Act, including the following: (i) no officer or employee with total compensation over \$425,000 in 2019 may receive total compensation which is more than what such officer or employee received in 2019, and severance pay and benefits received upon termination may not exceed twice such officer's or employee's 2019 total compensation; and (ii) any officer or employee with total compensation over \$3 million in 2019 may not receive total compensation over \$3 million plus half of the excess over \$3 million that was received in 2019. "Total compensation" includes salary, bonuses, stock awards, and other financial benefits provided by the borrower and its affiliates, but not severance pay or other benefits paid in connection with the termination of employment. The June 26 updates clarify that a borrower's method of calculating an officer's or employee's total compensation depends on whether the borrower is a private or public company: (FAQ H.12)

Private company borrowers: Borrowers

may elect to calculate total compensation consistent with the federal tax rules if (a) the borrower had gross revenues in the financial year 2019 of \$10 million or less, or (b) for any borrower who had gross revenues in the financial year 2019 of more than \$10 million, such borrower may calculate total compensation consistent with federal tax guidelines for all officers or employees who are not "Significant Deferred Compensation Recipients" (as defined in FAQ H.12). *Public company borrowers:* Borrowers must calculate total compensation per the methodology outlined in item 402(c) of Regulation S-K (17 CFR 229.402(c)(2)).

- Eligible Borrowers' Required Financial Information: Borrowers under MSLP loans originated after June 28, 2020 must provide an Eligible Lender with two sets of financial information at the time of origination: the borrower's 2019 financial information, and its financial information for the most recent quarter at the time of origination. In turn, the lender must submit the borrower's financial information to the Fed's Main Street Portal. The FAQ updates specify the information and documents in which borrowers and lenders, respectively, must submit to comply with these requirements. (FAQ L.8 - L.9)

